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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers	)	CCB/CPD File No. 98-63

COMMENTS OF
CTSI, INC. AND
MADISION RIVER COMMUNICATIONS

Andrew D. Lipman
Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500
Counsel for Madison River Communications

Dated: January 11, 2001

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SUMMARY

Contrary to the apparent assumption underlying the Commission's examination of CLEC interstate access charges, the record in this proceeding does not establish that any regulation of CLEC access charges is warranted. To the extent that any benchmark approach is adopted for CLEC access charges, ILEC rates are not a suitable basis for any benchmark for CLEC rates. There is no basis for using CALLS rates as a benchmark for CLEC interstate access charges because those rates are unlawful and, in any event, were negotiated by ILECs, not CLECs.

In addition, CLECs experience higher costs than ILECs that justify higher CLEC interstate access charges. The Commission has noted that CLEC access rates may be higher due to CLECs' high start-up costs for building new networks, their small geographic service areas, and the limited number of subscribers over which CLECs can distribute costs. It is also widely recognized that there are in general, significant cost differences in the provision of telecommunications service in urban, highly populated areas versus rural, less populated areas. Accordingly, any benchmark established for CLEC access charges should reflect the higher costs that CLECs incur in providing access service and should provide an exemption for CLECs providing service outside of the top 50 MSAs.

Any benchmark regulation of CLEC interstate access charges should also eliminate the highly problematic features of that scheme of regulation. Detariffing, for example, would impose unacceptable burdens on CLECs, especially those in rural areas and new CLECs, because it is not feasible to negotiate interstate access charges with the hundreds of IXCs that may use the CLECs' originating or terminating access services. Eliminating tariffs would also put CLECs at a competitive disadvantage vis-à-vis large IXCs which also have CLEC operations.

The Commission should also assure that any benchmark scheme does not legally, or as a practical matter, prescribe a rate structure for CLECs. Current ILEC tariffs were structured in such a way as to be inappropriate for developing any benchmarks for CLEC interstate access charges. The Commission should also keep in mind that its only previous experience with benchmark regulation, cable service regulation, was, and is, administratively burdensome for both the Commission and industry. Finally, should the Commission embark on a program of regulation of CLEC interstate access charges, it should assure that CLECs are afforded a suitable transition period that will not hinder investment or CLECs' ability to expand their provision of competitive local telecommunications services.

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COMMENTS OF
CTSI, INC. AND
MADISION RIVER COMMUNICATIONS

CTSI, Inc. ("CTSI") and Madison River Communications ("Madison") submit these comments in response to the Commission's request for further comment on issues concerning whether the Commission should "reform the manner in which competitive local exchange carriers . . . may tariff the charges for the switched local exchange access service that they provide to inter-exchange carriers." [1]

CTSI is a competitive local exchange carrier ("CLEC") currently operating primarily in eastern Pennsylvania. CTSI provides competitive local exchange services to both residential and business customers in its operating territory and provides exchange access services to interexchange carriers ("IXCs") that provide long distance services to its local exchange service

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[1] *Common Carrier Bureau Seeks Additional Comment on Issues Relating to CLEC Access Charge Reform*, Public Notice, CC Docket No. 96-262, DA 00-2751, released December 7, 2000, p. 1 ("*Public Notice*").

customers. CTSI is owned by Commonwealth Telephone Enterprises, Inc., headquartered in Dallas, Pennsylvania, the 8th largest independent incumbent local exchange carrier ("ILEC") in the United States.

Madison River is an ILEC providing local exchange access service in rural markets in Illinois, Alabama, Georgia and North Carolina. Madison River additionally provides competitive local exchange services in markets adjacent to its incumbent local exchange territories and in other markets in North Carolina, Illinois, Georgia, Louisiana, Mississippi and Alabama. Madison River also operates an interstate fiber communications network along the Gulf Coast from Texas to Florida and to Atlanta, Georgia.

I. A NEED FOR "REFORM" OF CLEC INTERSTATE ACCESS HAS NOT BEEN ESTABLISHED

As an initial matter, CTSI and Madison River are concerned with the apparent assumption underlying the Commission's examination of whether it should "reform the manner in which competitive local exchange carriers . . . may tariff the charges for the switched local exchange access service that they provide to inter-exchange carriers" that there is a need for reform of CLEC interstate access charges. As explained elsewhere in these comments, CLECs, especially those operating outside of major metropolitan areas, are justified in setting interstate access charges that are substantially higher than ILEC rates. To the best of our knowledge, the Commission has never made a finding that any CLEC access charge is unlawful, much less that there are substantial numbers of CLECs that have unlawfully high access charges. The information submitted by competitive carriers previously in this proceeding shows that generally competitive carrier access charges fall within a relatively small range of the ILEC rates.[2] CTSI

[2] CC Docket Nos. 96-262, 94-1, CCB/CPD File No. 98-63, Reply Comments of the Association for Local Telecommunications Services, Attachment A, Integrated Communications

and Madison River view the fact that the Commission at this late date has asked major IXCs to submit information about the access charges they pay to CLECs as accurately reflecting the fact that there is no record support for any finding that CLEC access charges are high or unreasonable. Thus, on the current record, there is no justification for a conclusion that the level of CLEC interstate access charges warrants regulation.

Moreover, to the extent there is any need to address the level of some CLEC interstate access charges, the Act and the Commission's rules already provide adequate mechanisms for doing so. To the extent an IXC believes that a CLEC's interstate access charges are unreasonable the IXC may seek relief by filing a complaint under Section 208 of the Act, the remedy intended for customers to challenge rates for interstate services. Indeed, some IXCs have already used this process, although they have been unsuccessful in showing that any CLEC's interstate access charges are unreasonable.[3]

However, while CLEC interstate access charges are not generally problematic, the interstate interexchange marketplace has been seriously disrupted by the fact that some IXCs are refusing to pay CLEC tariffed interstate access charges and are even threatening to refuse to complete calls to or from long distance customers. Rather than embark on new regulatory schemes to regulate CLEC interstate access charges, the Commission should enforce IXCs'

Corporation, *Interstate Switched Access Charges, A National Survey: A Public Policy Analysis of Interstate Switched Access Charges, Including a Survey of 1,435 Incumbent Local Exchange Carrier Tariffed Rates.* ("ICC Report")(October 29, 1999).

[3] *See, e.g., Sprint Communications Company, L.P. v. MGC Communications, Inc.*, File No. EB-00-MD-002 (2000)(The Commission denied Sprint's claim that exchange access rates charged by defendant were unjust and unreasonable and that Sprint failed to meet its burden by relying solely on the rates of defendant's incumbent competitors to establish a benchmark for reasonableness.)

obligations under the Act to pay CLEC tariffed interstate access charges and make emphatically clear that IXCs must complete calls to and from CLEC customers.

Accordingly, CTSI and Madison River seriously question whether there is any need to reform regulation of CLEC interstate access charges. However, the Commission should take vigorous action concerning some IXCs' refusal to pay access charges and threats to not complete calls.

II. ILEC RATES DO NOT DEFINE LAWFUL CLEC RATES

In the *Public Notice*, the Commission asks for general information on how CLEC rates compare to ILEC rates. This suggests that the Commission contemplates that ILEC rates could serve as a benchmark for CLEC interstate access charges. However, for reasons discussed below, ILEC rates do not constitute a benchmark for, or otherwise define, lawful CLEC rates for interstate access service.

A. The *Calls Order* Does Not Provide Any Guidance For CLEC Interstate Access Charges

CALLS Rates and RULE Changes Are Unlawful. In the *Public Notice*, the Commission seeks information on how CLEC access rates compare to those of incumbent local exchange carriers ("ILEC"), especially after changes to ILEC rates negotiated by some ILECs and some interexchange carriers ("IXCs") and established by the Commission in the *CALLS Order*.[4] This apparently reflects an assumption on the part of the Commission that price cap ILEC rates established in the *CALLS Order* are lawful and otherwise relevant to CLEC interstate access

[4] *Access Charge Reform*, Sixth report and Order, CC Docket No. 96-262, 15 FCC Rcd 12962 (2000)("*CALLS Order*").

charges. In fact, for the reasons presented in petitions for reconsideration of the *CALLS Order*,[5] the rate adjustments and rule changes adopted in the *CALLS Order* are unlawful because:

- they are inherently arbitrary, such as the use of the X-Factor for non-productivity purposes;
- because the Commission's assumption that the CALLS' rate adjustments and rule changes reflect an industry consensus was erroneous in that the CALLS proposal was opposed by significant industry segments including CLECs;
- because the Commission did not establish any procedures for adjusting price cap rates based on industry negotiations instead of price cap rules; and
- because the size of the new universal service fund is completely arbitrary.

The Commission should not establish any benchmark governing CLEC interstate access charges founded on any rates or rule changes adopted in the *CALLS Order*. At a minimum, the Commission should resolve petitions for reconsideration of the *CALLS Order* and permit any appeals to be resolved before basing any CLEC benchmark in any respect on CALLS ILEC rates.

CALLS Rates Were Negotiated by ILECs. In the *CALLS Order*, the Commission adjusted interstate access charges of price cap ILECs and amended its access charge and price cap rules based on negotiations between some ILECs and some IXCs. The Commission viewed the CALLS plan as representing a negotiated solution to contentious access charge issues.[6] CTSI and Madison River believe that Commission-sponsored negotiations might form a suitable approach to resolving any regulatory issues concerning CLEC interstate access charges.

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[5] *See* Petition for Reconsideration filed by the Association for Local Telecommunications Services and Focal Communications Corporation, CC Docket No. 96-62, filed July 21, 2000.

[6] *CALLS Order*, para. 35.

However, rates that ILECs negotiated for themselves should not be presumed applicable, or automatically applied, to CLECs. CLEC rates were not the subject of CALLS negotiations, nor did CLECs participate in those negotiations. Therefore, CALLS rates may not simply be lifted from the context of CALLS negotiations and applied to CLECs. This would egregiously compound the substantive and procedural errors reflected in *the CALLS Order*.

Accordingly, the Commission may not use price cap ILEC rates established in the *CALLS Order* as the basis for establishing any benchmark or other regulation governing CLEC interstate access charges, even if CALLS rates were otherwise lawful. Instead, to the extent that the Commission chooses to adopt a scheme governing CLEC interstate access charges based on industry negotiations, it must do so on the basis of negotiation by CLECs, not ILECs. In response to the Commission's query as to what role CALLS rates should play with respect to CLEC interstate access charges, CTSI and Madison River respond in the strongest possible terms that those rates should play absolutely no role whatsoever.

B. CLECs Experience Higher Costs.

The record in this proceeding shows that CLECs often face higher costs in the provision of access service than ILECs.[7] As discussed in greater detail below, the following factors lead to higher costs for CLECs in providing access services:

- CLECs experience lower levels of utilization for switching and transport facilities;

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[7] CC Docket Nos. 96-262, 94-1, CCB/CPD File No. 98-63, Comments of Allegiance Telecom, Inc. at pp. 12-16 (October 29, 1999)("Allegiance Comments"); Comments of Focal Communications Corporation and Hyperion Telecommunications, Inc. d/b/a Adelphia Business Solutions at pp. 17 (October 29, 2000)("Focal/Adelphia Comments"); Reply Comments of the Association for Local Telecommunications Services at pp. 6-12 (October 29, 1999)("ALTS Reply Comments").

- Long distance traffic is a much more significant cost driver for CLECs;
- CLECs tend to serve a sparse customer base and CLEC customers tend to be located at a greater distance from CLEC switching facilities. [8]

Thus, any benchmark or other oversight of CLEC interstate access charges established in this proceeding should reflect the fact that CLECs generally face higher costs in providing access service than ILECs.[9]

Lower Utilization Rates for Facilities. CLECs typically purchase large switches capable of serving large numbers of customers and SONET facilities capable of carrying large amounts of traffic.[10] As has been noted, however:

> [m]ost CLECs must place these facilities substantially before they are able to acquire sufficient numbers of customers to achieve levels of utilization for which the facilities are designed. This means that over the ramp-up period, the utilization of CLEC facilities is substantially below full capacity. This situation contrasts sharply with that of the ILECs. Often, when an ILEC places a new digital switch, the company does so to replace an old analog switch that is already serving a large amount of customers.[11]

Thus, even though CLECs may employ optimally efficient, state-of-the-art facilities, they are likely to experience average utilization rates over the economic life of the facilities below those enjoyed by the larger ILECs. Further,

> [t]hese costs [of providing access service] are typically higher on a per-unit basis than incumbent access rates because the costs are spread over a smaller customer

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8 ICC Report; *see also* Rural Task Force, *White Paper 2: The Rural Difference* (January 2000)("*White Paper 2*") at p. 32.

9 Any benchmark established should be set well above ILEC rates. *See* Allegiance Comments at p. 12.

10 ICC Report at p. 8.

11 ICC Report at p. 8.

> base. Further, these charges are based on recent investment in modern facilities built to compete with obsolete and fully depreciated plant of the incumbents.[12]

Thus, CLECs must set higher than ILEC access charges in light of low utilization of facilities.[13]

Long Distance Traffic on CLEC Networks. Evidence submitted in the record of this proceeding also shows that:

> [m]ost of the calls on the ILECs' networks are local in nature. Thus, the ILEC's network is largely designed to accommodate intra-office and interoffice on-net local calling. By contrast, CLECs have very little on-net calling. Most of their traffic is off-net, and much of it is long distance. As a result, the CLEC's network is designed to accommodate a much larger percentage of off-net, long distance calling. That is, originating and terminating long distance calls are a much more significant cost driver in the CLEC network than in the ILEC network.[14]

Therefore, in contrast to ILECs, CLECs should be permitted to recover a higher percentage of costs in interstate access charges since a greater percentage of costs are attributable to long distance traffic.

Spare Customer Bases/Distance from CLEC Switches. Even when CLECs operate in urban areas with high population densities, CLECs will not have the dense customer base that ILECs operating in those areas will have. Instead, CLEC customers will be spread out throughout the region and the CLEC will serve a fraction of the customers in the region. It has been noted that "if the CLEC's customer base is expressed on a customer-per-square-mile basis,

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[12] CC Docket Nos. 96-262 & 97-146, Comments of the Rural Independent Competitive Alliance at p. 3 (July 12, 2000)("RICA Comments").

[13] Rates for ILECs are premised on the assumption that they will be able to fully recover costs of facilities over a number of years. This produces lower rates. Holding CLECs to the same standard would discourage investment by CLECs and hinder the development of facilities based competition. Allegiance Comments at p. 16.

[14] ICC Report at p. 9.

it is sparse relative to that of the urban LECs."[15] Thus, even in densely populated areas, CLEC customers tend to be located at substantial distances from the CLEC's serving central office.[16]

These factors show switched access charges for CLECs can be justifiably higher than ILEC rates. The Commission has stated its intent to have access charges be more reflective of the costs of providing access service.[17] The Commission needs to recognize the higher costs that CLECs experience and permit them to recover these higher costs through rates for access service that are higher than the ILEC in whose territory they are operating. To the extent the Commission establishes a benchmark for CLEC interstate access charges based on ILEC rates, the benchmark would need to be set substantially above ILEC rates in order to accommodate the different cost characteristics of CLECs.

III. ANY REGULATORY FRAMEWORK GOVERNING CLEC INTERSTATE ACCESS CHARGES MUST ADDRESS SPECIAL CIRCUMSTANCES OF CLECS OPERATING IN "RURAL" AREAS

A. Cost Characteristics Justifying Higher CLEC Rates Are Intensified In Rural Areas

The Commission, Congress and virtually all participants in the telecommunications industry recognize that there are, in general, significant cost differences in the provision of

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15 *Id.*

16 *Id.*

17 *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, Petition for U.S. West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, CC Docket Nos. 96-262, 94-1, CCB/CPD File No. 98-63, and CC Docket No. 98-157, Fifth Report and Order and Further Notice of Proposed Rulemaking, FCC 99-206, at p. 4 (August 27, 1999)("*Pricing Flexibility Order*").

service between urban, highly populated areas and rural, less populated areas.[18] Indeed, the Commission's regulation of ILECs generally permits special treatment and higher rates for ILECs operating outside of major metropolitan areas.[19] Therefore, the cost characteristics that would justify a higher CLEC rate, even for those operating in urban areas, apply with greater force for CLECs providing service outside of urban areas.

For example, CLECs operating in rural areas, where there will be an even smaller pool of customers from which the CLECs can draw to recover the costs of these facilities, can be expected to have even lower utilization rates than CLECs operating in urban areas.[20] Similarly, ILECs operating in rural areas find that their rural customers are more likely to make toll calls than their urban counterparts.[21] Rural customers generally generate much more toll traffic than local traffic. Thus, long distance traffic will be an even greater cost driver on CLEC networks in rural areas.[22] CLECs operating in rural areas will likely have customers that are located at even larger distances from their switches,[23] and will incur higher transport costs to service these customers.

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18 *See, generally, White Paper 2.*

19 *Public Notice*, p. 2.

20 For instance, "because Rural Carriers, on average, have substantially fewer lines per switch than non-RTC, they cannot benefit from economies of density as well as their large counterparts." *White Paper 2* at p. 44.

21 *White Paper 2* at p. 30.

22 *White Paper 2* at p. 30.

23 Rural carriers generally utilize longer loops and have higher operating expenses per customer. *White Paper 2* at p. 43.

Accordingly, the cost characteristics of CLECs operating outside of urban areas justifies special treatment for them in any regulatory scheme adopted by the Commission governing CLEC interstate access charges generally.

B. Rural CLECs Compete Against Averaged ILEC Rates

CLECs operating outside of major metropolitan areas frequently compete against carriers charging unitary switched access rates based on the average cost of providing service in both urban and rural areas. For example, CTSI currently provides local exchange service to business and residential customers in smaller markets in Pennsylvania and New York such as Wilkes-Barre, Scranton, Harrisburg, and Binghamtom. CTSI does not serve Philadelphia, New York City or other major metropolitan areas. Verizon, however, charges unitary switched access rates in Pennsylvania and New York based on the average cost it incurs within each state for these services. Thus, CTSI and other carriers operating only in smaller markets are unable to subsidize the costs incurred in providing switched access services in small markets with revenues derived from large urban areas. For this reason, averaged rates of ILECs in whose territory a CLEC competes may be not validly be applied to govern the rates of a CLEC that does not also average rates to the same extent as the ILEC.

IV. THE RURAL EXEMPTION SHOULD BE AVAILABLE TO ANY CLEC PROVIDING SERVICE TO A CUSTOMER OUTSIDE THE TOP 50 METROPOLITAN STATISTICAL AREAS

The *Public Notice* did not explain, and it is far from clear at this point, how a rural exemption from any regulatory scheme governing CLEC interstate access charges would work. In Section V. below, CTSI and Madison River highlight some of the problematic features of a possible rural exemption that the Commission must adequately address. However, CTSI and Madison River strongly recommend that the Commission establish

such an exemption and make it available with respect to any access service provided to a subscriber located outside the top 50 MSAs.[24]

The Commission should establish a rural exemption for CLECs operating outside the top 50 MSAs because this will capture CLECs who are most likely to experience disproportionately high costs in providing access service – those providing service outside of major metropolitan areas. This definition would also be easy to administer. Moreover, the top 50 MSAs would establish a suitable cost-based approach to defining eligibility for the rural exemption because most CLEC facilities are located in the top 50 MSAs and in those areas CLECs will have higher utilization rates and higher customer density. Thus, the Commission has previously determined that most CLEC switches are located within a MSA.[25] 61% of all requesting carrier switches have been deployed in the top 50 MSAs and 96% of the top MSAs have four or more switches.[26] The top 50 MSAs are also the areas where most of the CLEC lines are located.[27] Of course, all CLECs experience higher costs justifying higher access charges than ILECs even within the top 50 MSAs for all the reasons discussed above.

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[24] An MSA is made up of a county or group of contiguous counties surrounding a city with a population of 50,000 or more. *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, at ¶ 279, fn. 551 (1999)("*UNE Remand Order*").

[25] *UNE Remand Order* at ¶ 280.

[26] *Id.*

[27] *See, UNE Remand Order*, ¶ 281, fn. 557.

The Commission should reject the alternative of basing eligibility for the exemption on location of facilities, or on provision of service exclusively outside of the top 50 MSAs. Instead, eligibility should be based on the location of the customer outside of the top 50 MSAs. Thus, a CLEC would be entitled to the exemption with respect to any access services provided to a customer located outside the top 50 MSAs. This would avoid the need to evaluate where a CLEC has installed facilities. Further, it will fully capture the increased costs that CLECs experience for service provided to customers outside of major metropolitan areas.

The Commission should reject other definitions of a rural exemption that have been suggested.

Sprint Definition. Sprint proposes that rural areas be defined as areas outside of Metropolitan Statistical Areas. To qualify for this proposed exemption the CLEC: (i) could only operate in rural areas and would not qualify if it also offered service within an MSA; (ii) would have to be competing with ILECs that offers service in both rural and non-rural areas of state; and (iii) would have to make its services available to all customers in its service area rather than limit such service to business customers or customers in towns within the area.[28]

By this proposed definition, Sprint is seeking to limit use of the exemption to all but a small subset of CLECs, *i.e.*, those providing service exclusively in rural areas. Sprint fails to provide any justification for this limitation. CLECs operating in rural areas experience higher costs of providing access service regardless of whether they additionally provide service in other areas. There is no basis to deny CLECs recovery of their costs simply because they also provide

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[28] CC Docket No. 96-262, *Ex Parte Presentation of Sprint Corporation* at pp. 1-2 (October 11, 2000)

service in non-qualifying areas. If the Commission's goal is truly to move towards costs-based rates for access service, then the Commission must recognize and account for the higher costs that CLECs incur. Sprint's proposed definition would arbitrarily deny to CLECs operating in rural areas the ability to recover their costs of providing access service in those areas. CLECs who operate in both high cost and non-cost areas will be unable to average costs if they are subject to a restrictive benchmark in low cost areas and denied an exemption in high cost areas.[29]

RICA Definition. RICA suggests the following definition for the rural exemption:

> Defines a rural CLEC as a CLEC that provides telephone exchange service and other telecommunications services to any area that does not include either (i) any incorporated place of 20,000 inhabitants or more; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of Census; or provides telephone exchange service, including exchange access, to fewer than 50,000 access lines.[30]

This definition would unreasonably limit the ability of CLECs to recover costs. It is apparently grounded in a conception of a network architecture in which towns within urban areas or towns of 20,000 or more inhabitants would be close to a LEC's serving wire center. This may be the case for large ILECs, but not for CLECs. CLECs:

> [t]ypically enter a market with a distributed network architecture that substitutes longer transport routes for multiple switches and outside plant facilities while at the same time providing origination/termination services within geographic areas comparable to those served by ILEC tandems. Though CLECs generally don't deploy stand-alone Class 5 (end office) and Class 4 (tandem) switches, their distributed architecture provides similar organization and termination services across comparable geographic areas. By utilizing SONET nodes collocated in multiple ILEC central offices, CLECs often are able to serve

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[29] A constricted benchmark could unduly cramp the ability of CLECs to invest in network architecture. CC Docket Nos. 96-262 and 94-1, Reply Comments of Allegiance Telecom, Inc. at p. 8 ("*Allegiance Reply Comments*").

[30] CC Docket No. 96-262, *Ex Parte Letter of the Rural Independent Competitive Alliance* at p. 1 (August 4, 2000).

a customer base spread across an entire state or LATA using a single, integrated end office and tandem switching platform.[31]

Since the CLEC switch will most likely be within the MSA, an MSA approach would be most in accord with the CLECs costs for switched access. The most important factor will not be if a customer is in a town of 20,000 or more, but whether the customer is outside a top MSA. If the customer is outside the MSA, the costs of providing access will rise even more because it is most likely that the CLEC's switch is in the MSA.

A strict population density approach is also problematic in that there is no magic population figure where costs increase. The RICA survey shows that CLECs operating in rural areas provide service to areas of varying population densities. Furthermore, rural areas will likely be dotted with towns interspersed in sparsely populated areas. The costs of access service for the CLEC will not immediately decrease when the town line is crossed.

A definition based on access lines is problematic because it would arbitrarily eliminate CLECs that provide service in both low cost and high cost areas. A large CLEC will still incur substantial costs for providing access service in rural and high cost areas. A CLEC also is not likely to have the same ability as larger ILECs to average costs throughout a wide area. If these CLECs are precluded from recovering the higher cost of providing access service in those areas, CLECs will be discouraged from entering these markets, and will be unable to bring the benefits of competition to them.

Statutory Definition. The Communications Act defines a rural telephone company as a company:

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[31] ICC Report at p. 5.

that provides (A) common carrier services to any local exchange carrier study area that does not include either (i) any incorporated place of 10,000 inhabitants or more, or any part thereof; or (ii) any territory incorporated or unincorporated included in an urbanized areas as defined by the Bureau of the Census; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (d) has less than 15% of its access line in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.[32]

However, there is no reason to believe that this definition bears any relationship to costs incurred in providing exchange access service. Rather, this definition was intended by Congress to serve in wholly unrelated areas, such as defining which ILECs could be exempt from unbundling obligations under the Act. Accordingly, the Commission should not employ the statutory definition of rural ILECs for the purpose of defining an exemption from benchmark regulation for CLECs.

V. A RURAL EXEMPTION MUST ELIMINATE PROBLEMATIC ASPECTS OF A BENCHMARK AND/OR DETARFFING "SOLUTION" TO CLEC INTERSTATE ACCESS CHARGES

Assuming that the Commission determines that it needs to alter in any respect the current regulatory framework governing CLEC interstate access charges, CTSI and Madison River urge the Commission to proceed very cautiously. CLECs are currently experiencing heightened marketplace difficulties.[33] The Commission should be sensitive to the fact that any regulatory actions that adversely affect CLEC interstate access revenue, or that are perceived as doing so, will only heighten these difficulties and undermine the pro-competitive goals of the Act. In addition, the types of regulatory reform that the Commission may be contemplating in this proceeding are highly problematic. CTSI and Madison River urge the Commission in moving

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32 47 U.S.C. § 154(37)

33 *See, e.g.* Small Phone Companies Losing Ground to Telecom Giants, CnetNews.com, http://news.cnet.com/news/0-1004-201-2932468-0.html?tag=st.ne.1004.ttext.sf, October 6, 2000.

forward with any benchmark regulation of CLEC access charges generally to make sure that any exemption for CLECs operating outside the top 50 MSAs adequately addresses these concerns

Detariffing Would Impose Unacceptable Burdens on CLECs. It is possible that the Commission is contemplating that some form of mandatory detariffing of CLEC interstate access charges should play a role in amended regulations governing CLEC interstate access charges. For example, the Commission might impose mandatory detariffing on all CLEC interstate access charges or impose detariffing only on CLECs charging above some benchmark rate.

In the absence of tariffs, a CLEC would need to individually negotiate interstate access charges with every IXC that might use the CLEC's originating or terminating access services, *i.e.* the several hundred IXCs that might be providing long distance service to the CLEC's local service customers or that offer long distance service to virtually any subscriber nationwide that may be calling the CLEC's customer. Simply stated, it is not practical for CLECs to set interstate access charges through negotiations with the hundreds of IXCs that may use a CLEC's access services. CLECs would need to devote significant time and resources, which are largely unavailable as a practical matter in the current business environment, to negotiating access charges with numerous IXCs. These burdens would be particularly onerous for new CLECs entering the market after any such detariffing scheme took effect, and for smaller CLECs and would create a significant barrier to entry.

Moreover, IXCs would not necessarily have any incentive to reach an agreement with the CLEC for terminating access in situations where the IXC has no relationship to either the CLEC or the CLEC's local service subscriber. This would also be true for originating access services for IXCs offering "dial around" service. Detariffing could effectively compel CLECs to offer free interstate access services to these IXCs. Many IXCs, such as AT&T, also have CLEC

operations. The elimination of tariffed CLEC access rates would provide such IXCs with the opportunity to strategically deny CLECs with the opportunity to serve certain end user customers. For example, suppose a local branch of a nation al business would like to do business with a CLEC, but has instructions from its national headquarters to keep its long distance contract with a particular IXC. That IXC, by refusing to negotiate access interconnection terms with the CLEC, could easily put the CLEC at a competitive disadvantage and provide an unfair and uneconomic opportunity for its own CLEC operations.

Accordingly, the Commission should not rely to any significant extent on mandatory detariffing in any "reform" of CLEC interstate access charges.

CLECs Should Not Be Required To Have the Same Rate Structure As ILECs. Under any benchmark scheme tied to ILEC rates, it would be necessary for the Commission to establish a methodology and form for converting rates of CLECs that choose not to have the same rate structure as that reflected in the benchmark rate so that it is possible to determine whether the CLEC rate is above or below the benchmark. For example, for those CLECs that do not charge the multi-line business PICC, it would be necessary to convert their rate structure to a rate structure that has both switched access elements and the PICC in order to be able to compare rates to the ILEC rates. The Commission's only experience to date with benchmark regulation shows that establishing a benchmark necessitates complicated forms and procedures for comparing the regulated company's rates to the benchmark.[34] The Commission should not repeat that experience here, or prescribe a rate structure for CLECs, especially for rural CLECs.

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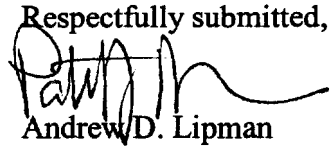
[34] The Commission's most extensive experience with benchmark regulation was regulation of rates for cable service under the 1992 Cable Act. *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation*, MM Docket No. 92-266, 8 FCC Rcd 5631 (1993). That experience shows that what was initially

VI. CONCLUSION

For these reasons, the Commission should establish an exemption from any regulation of CLEC interstate access charges for interstate access services provided to customers outside of the top 50 MSAs,

Respectfully submitted,



Andrew D. Lipman
Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500
Counsel for Madison River Communications

Dated: January 11, 2001

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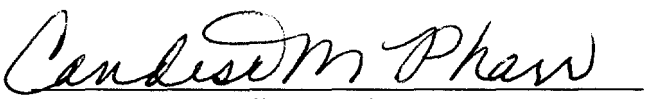
intended as a simple way of regulation turned about to be extremely complicated and burdensome.

CERTIFICATE OF SERVICE

I, Candise M. Pharr do hereby certify that on this 11th day of January, 2001 the foregoing Comments of CTSI, Inc. and Madision River Communications was delivered by hand and first class mail to the following:



Candise M. Pharr

VIA HAND DELIVERY
Magalie Roman Salas, Esq., Secretary
Federal Communications Commission
The Portals - TW-A325
445 Twelfth Street, SW
Washington, DC 20554

VIA HAND DELIVERY
Debra Weiner
Federal Communications Commission
445 12th Street, S.W. - The Portals
Washington, DC 20554

VIA HAND DELIVERY
Rebecca Beynon
Federal Communications Commission
445 12th Street, S.W. - The Portals
Washington, DC 20554

VIA HAND DELIVERY
Kyle D. Dixon
Federal Communications Commission
445 12th Street, S.W.
The Portals
Washington, DC 20554

VIA HAND DELIVERY
Christopher Wright
Federal Communications Commission
The Portals - 445 12th Street, S.W.
Fifth Floor
Washington, DC 20554

VIA HAND DELIVERY
Dorothy Atwood
Federal Communications Commission
Common Carrier Bureau
445 12th Street, S.W. - Suite 5A848
The Portals
Washington, DC 20554

VIA HAND DELIVERY
Jane E. Jackson
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Richard Lerner
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Tamara Preiss
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Chairman William E. Kennard
Federal Communications Commission
445 12th Street, S.W. - Suite B201

The Portals
Washington, DC 20554

VIA HAND DELIVERY
Laurence Bourne
Federal Communications Commission
445 12th Street, S.W.
The Portals
Washington, DC 20554

VIA HAND DELIVERY
Aaron Goldschmidt
Federal Communications Commission
445 12th Street, S.W.
The Portals
Washington, DC 20554

VIA HAND DELIVERY
Anna Gomez
Office of Chairman William E. Kennard
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Commissioner Susan Ness
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Jordan Goldstein
Office of Commissioner Susan Ness
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Commissioner Michael K. Powell
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Commissioner Gloria Tristani
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
Deena Shetler
Office of Commissioner Gloria Tristani
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

VIA HAND DELIVERY
International Transcription Services
445 12th Street, SW - CY-B400
Washington, DC 20554

John T. Nakahata
Samuel L. Feder
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, NW
Washington, DC 20036

Mark C. Rosenblum
Judy Sello
AT&T Corp
295 North Maple Avenue – Room 1135L2
Basking Ridge, New Jersey 07920

Gene C. Schaerr
James P. Young
Sidley & Austin
1722 Eye Street, NW
Washington, DC 20006

M. Robert Sutherland
Richard M. Sbaratta
Bellsouth
1155 Peachtree Street, NE – Suite 1700
Atlanta, Georgia 30309-3610

Gary M. Epstein
Richard Cameron
Latham & Watkins
1001 Pennsylvania Avenue, NW
Washington, DC 20554

Alfred G. Richter, Jr.
Roger K. Toppins
Michael J. Zpevak
Charles J. Scharnberg
SBC Telecommunications, Inc.
One Bell Plaza – Room 3003
Dallas, Texas 75202

Jay C. Keithley
Leon M. Kestenbaum
Peter N. Sywenki
Richard Juhnke
Sprint Corporation
1850 M Street NW – 11th Floor
Washington, DC 20036

Edward Shakin
1320 North Court House Road – 8th Floor
Arlington, Virginia 22201

Cheryl A. Tritt
Frank W. Krogh
Christa M. Parker
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20007

George Bochetto
Jeffrey W. Ogren
Bochetto & Lentz, P.C.
1524 Locust Street
Philadelphia, Pennsylvania 19102

George N. Barclay
Michael J. Ettner
General Services Administration
1800 F Street, NW - Room 4002
Washington, DC 20405

Douglas G. Bonner
Sana D. Coleman
Arent Fox Kintner Plotkin & Kahn PLLC
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

Coleen Boothby
Stephen J. Rosen
Levine, Blaszak, Block & Boothby LLP
2001 L Street, NW - Suite 900
Washington, DC 20036

Michael J. Bradley
Richard J. Johnson
Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129

Jonathan E. Canis
David A. Konuch
Michael B. Hazzard
Kelley Drye & Warren LLP
1200 19th Street, NW - Suite 500
Washington, DC 20036

David Cosson
Syliva Lesse
John Kuykendall
Kraskin, Lesse & Cosson, LLP
2120 L Street, NW - Suite 520
Washington, DC 20037

Brian Conboy
Thomas Jones
Christi Shewman
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036

Renee Roland Crittendon
1200 19th Street, NW
Washington, DC 20006

Jonathan Askin
Teresa K. Gaugter
ALTS
888 17th Street, NW
Washington, DC 20006

Donald C. Davis
Claudia Earls
Z-Tel Communications, Inc.
601 South Harbour Island Boulevard
Tampa, Florida 33602

Lawrence E. Harris
David S. Turetsky
Terri B. Natoli
Edward B. Krachmer
8065 Leesburg Pike - Suite 400
Vienna, Virginia 22182

Henry G. Hultquist
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, NW - Suite 701
Washington, DC 20006

Leon M. Kestenbaum
Jay Keithley
Richard Johnke
Sprint Corporation
401 9th Street, NW - 4th Floor
Washington, DC 20004

Russell Merbeth
Larry Walke
Winstar Communications, Inc.
1615 L Street, NW - Suite 1200
Washington, DC 20036

Richard Metzger, Vice President
Regulatory Affairs & Public Policy
Focal Communications Corporation
7799 Leesburg Pike - Suite 850 N
Falls Church, Virginia 22043

Gail L. Polivy
1850 M Street, NW - Suite 1200
Washington, DC 20036

Michael J. Shortley, III
180 South Clinton Avenue
Rochester, New York 14646